

of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of students from low-income families.

(b) The Secretary may elect to—

(1) Use this competitive priority only in certain years; and

(2) Consider the points awarded under this priority only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 225.11.

(Approved by the Office of Management and Budget under control number 1855-0007)

(Authority: 20 U.S.C. 7223; 1232)

Subpart C—What Conditions Must Be Met by a Grantee?

§ 225.20 When may a grantee draw down funds?

(a) A grantee may draw down funds after it has signed a performance agreement acceptable to the Department of Education and the grantee.

(b) A grantee may draw down and spend a limited amount of funds prior to reaching an acceptable performance agreement provided that the grantee requests to draw down and spend a specific amount of funds and the Department of Education approves the request in writing.

(Authority: 20 U.S.C. 7223d)

§ 225.21 What are some examples of impermissible uses of reserve account funds?

(a) Grantees must not use reserve account funds to—

(1) Directly pay for a charter school's construction, renovation, repair, or acquisition; or

(2) Provide a down payment on facilities in order to secure loans for charter schools. A grantee may, however, use funds to guarantee a loan for the portion of the loan that would otherwise have to be funded with a down payment.

(b) In the event of a default of payment to lenders or contractors by a charter school whose loan or lease is guaranteed by reserve account funds, a grantee may use these funds to cover defaulted payments that are referenced under paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 7223d)

PART 226—STATE CHARTER SCHOOL FACILITIES INCENTIVE PROGRAM

Subpart A—General

Sec.

226.1 What is the State Charter School Facilities Incentive program?

226.2 Who is eligible to receive a grant?

226.3 What regulations apply to the State Charter School Facilities Incentive program?

226.4 What definitions apply to the State Charter School Facilities Incentive program?

Subpart B—How Does the Secretary Award a Grant?

226.11 How does the Secretary evaluate an application?

226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

226.13 What statutory funding priority does the Secretary use in making a grant award?

226.14 What other funding priorities may the Secretary use in making a grant award?

Subpart C—What Conditions Must Be Met by a Grantee?

226.21 How may charter schools use these funds?

226.22 May grantees use grant funds for administrative costs?

226.23 May charter schools use grant funds for administrative costs?

AUTHORITY: 20 U.S.C. 1221e-3; 7221d(b), unless otherwise noted.

SOURCE: 70 FR 75909, Dec. 21, 2005, unless otherwise noted.

Subpart A—General

§ 226.1 What is the State Charter School Facilities Incentive program?

(a) The State Charter School Facilities Incentive program provides grants to States to help charter schools pay for facilities.

(b) Grantees must use these grants to—

(1) Establish new per-pupil facilities aid programs for charter schools;

(2) Enhance existing per-pupil facilities aid programs for charter schools; or

(3) Administer programs described under paragraphs (b)(1) and (2) of this section.

(Authority: 20 U.S.C. 7221d(b))

§ 226.2 Who is eligible to receive a grant?

States are eligible to receive grants under this program.

(Authority: 20 U.S.C. 7221(b))

§ 226.3 What regulations apply to the State Charter School Facilities Incentive program?

The following regulations apply to the State Charter School Facilities Incentive program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Non-procurement)).

(10) 34 CFR part 97 (Protection of Human Subjects).

(11) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(12) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 226.

(Authority: 20 U.S.C. 1221e–3; 7221d(b))

§ 226.4 What definitions apply to the State Charter School Facilities Incentive program?

(a) *Definitions in the statute.* The following term used in this part is defined in section 5210 of the Elementary and Secondary Education Act of 1965, as amended (ESEA):

Charter school

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Facilities
Grant
Grantee
Project
Public
Secretary

(c) *Other definition.* The following definition also applies to this part:

Construction means—

(1) Preparing drawings and specifications for school facilities projects;

(2) Repairing, renovating, or altering school facilities;

(3) Extending school facilities;

(4) Erecting or building school facilities; and

(5) Inspections or supervision related to school facilities.

(Authority: 20 U.S.C. 7221d(b); 7221i(1))

Subpart B—How Does the Secretary Award a Grant?

§ 226.11 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in

§ 226.12 and the competitive preference priorities in § 226.13 and § 226.14.

(b) The Secretary informs applicants of the maximum possible score for each criterion and competitive preference priority in the application package or in a notice published in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 7221d(b))

§ 226.12 What selection criteria does the Secretary use in evaluating an application for a State Charter School Facilities Incentive program grant?

The selection criteria for this program are as follows:

(a) *Need for facility funding.* (1) The need for per-pupil charter school facility funding in the State.

(2) The extent to which the proposal meets the need to fund charter school facilities on a per-pupil basis.

(b) *Quality of plan.* (1) The likelihood that the proposed grant project will result in the State either retaining a new per-pupil facilities aid program or continuing to enhance such a program without the total amount of assistance (State and Federal) declining over a five-year period.

(2) The flexibility charter schools have in their use of facility funds for the various authorized purposes.

(3) The quality of the plan for identifying charter schools and determining their eligibility to receive funds.

(4) The per-pupil facilities aid formula's ability to target resources to charter schools with the greatest need and the highest proportions of students in poverty.

(5) For projects that plan to reserve funds for evaluation, the quality of the applicant's plan to use grant funds for this purpose.

(6) For projects that plan to reserve funds for technical assistance, dissemination, or personnel, the quality of the applicant's plan to use grant funds for these purposes.

(c) *The grant project team.* (1) The qualifications, including relevant training and experience, of the project manager and other members of the grant project team, including employees not paid with grant funds, consultants, and subcontractors.

(2) The adequacy and appropriateness of the applicant's staffing plan for the grant project.

(d) *The budget.* (1) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the proposed grant project.

(2) The extent to which the costs are reasonable in relation to the number of students served and to the anticipated results and benefits.

(3) The extent to which the non-Federal share exceeds the minimum percentages (which are based on the percentages under section 5205(b)(2)(C) of the ESEA), particularly in the initial years of the program.

(e) *State experience.* The experience of the State in addressing the facility needs of charter schools through various means, including providing per-pupil aid, access to State loan or bonding pools, and the use of Qualified Zone Academy Bonds.

(Approved by the Office of Management and Budget under control number 1855-0012)

(Authority: 20 U.S.C. 7221d(b))

§ 226.13 What statutory funding priority does the Secretary use in making a grant award?

The Secretary shall award additional points under a competitive preference priority regarding:

(a) *Periodic Review and Evaluation.* The State provides for periodic review and evaluation by the authorized public chartering agency of each charter school at least once every five years unless required more frequently by State law, to determine whether the charter school is meeting the terms of the school's charter and is meeting or exceeding the student academic performance requirements and goals for charter schools as set forth under State law or the school's charter.

(b) *Number of High-Quality Charter Schools.* The State has demonstrated progress in increasing the number of high-quality charter schools that are held accountable in the terms of the schools' charters for meeting clear and measurable objectives for the educational progress of the students attending the schools, in the period prior

§ 226.14

to the period for which the State applies for a grant under this competition.

(c) *One Authorized Public Chartering Agency Other than an LEA, or an Appeals Process.* The State—

(1) Provides for one authorized public chartering agency that is not a local educational agency (LEA), such as a State chartering board, for each individual or entity seeking to operate a charter school pursuant to State law; or

(2) In the case of a State in which LEAs are the only authorized public chartering agencies, allows for an appeals process for the denial of an application for a charter school.

(d) *High Degree of Autonomy.* The State ensures that each charter school has a high degree of autonomy over the charter school's budgets and expenditures.

(Approved by the Office of Management and Budget under control number 1855-0012)

(Authority: 20 U.S.C. 7221b; 7221d(b))

§ 226.14 What other funding priorities may the Secretary use in making a grant award?

(a) The Secretary may award points to an application under a competitive preference priority regarding the capacity of charter schools to offer public school choice in those communities with the greatest need for this choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under title I of the ESEA;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform poorly on State academic assessments; and

(3) The extent to which the applicant would target services to communities with large proportions of low-income students.

(b) The Secretary may award points to an application under a competitive preference priority for applicants that have not previously received a grant under the program.

34 CFR Ch. II (7-1-12 Edition)

(c) The Secretary may elect to consider the points awarded under these priorities only for proposals that exhibit sufficient quality to warrant funding under the selection criteria in § 226.12 of this part.

(Approved by the Office of Management and Budget under control number 1855-0012)

(Authority: 20 U.S.C. 7221d(b))

Subpart C—What Conditions Must Be Met by a Grantee?

§ 226.21 How may charter schools use these funds?

(a) Charter schools that receive grant funds through their State must use the funds for facilities. Except as provided in paragraph (b) of this section, allowable expenditures include:

(1) Rent.

(2) Purchase of building or land.

(3) Construction.

(4) Renovation of an existing school facility.

(5) Leasehold improvements.

(6) Debt service on a school facility.

(b) Charter schools may not use these grant funds for purchasing land when they have no immediate plans to construct a building on that land.

(Authority: 20 U.S.C. 7221d(b))

§ 226.22 May grantees use grant funds for administrative costs?

State grantees may use up to five percent of their grant award for administrative expenses that include: indirect costs, evaluation, technical assistance, dissemination, personnel costs, and any other costs involved in administering the State's per-pupil facilities aid program.

(Authority: 20 U.S.C. 7221d(b))

§ 226.23 May charter schools use grant funds for administrative costs?

(a) Except as provided in paragraph (b) of this section, charter school subgrantees may use grant funds for administrative costs that are necessary and reasonable for the proper and efficient performance and administration of this Federal grant. This use of funds, as well as indirect costs and rates,

must comply with EDGAR and the Office of Management and Budget Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

(b) Consistent with the requirements in 34 CFR 75.564(c)(2), any charter school subgrantees that use grant funds for construction activities may not be reimbursed for indirect costs for those activities.

(Authority: 20 U.S.C. 1221e-3; 7221d(b))

PART 230—INNOVATION FOR TEACHER QUALITY

Subpart A—Troops-to-Teachers Program

Sec.

230.1 What is the Troops-to-Teachers program?

230.2 What definitions apply to the Troops-to-Teacher program?

230.3 What criteria does the Secretary use to select eligible participants in the Troops-to-Teachers program?

Subpart B [Reserved]

AUTHORITY: 20 U.S.C. 1221e-3, 3474, and 6671-6684, unless otherwise noted.

SOURCE: 70 FR 38021, July 1, 2005, unless otherwise noted.

Subpart A—Troops-to-Teachers Program

§ 230.1 What is the Troops-to-Teacher program?

Under the Troops-to-Teachers program, the Secretary of Education transfers funds to the Department of Defense for the Defense Activity for Non-Traditional Education Support (DANTES) to provide assistance, including a stipend of up to \$5,000, to an eligible member of the Armed Forces so that he or she can obtain certification or licensing as an elementary school teacher, secondary school teacher, or vocational/technical teacher and become a highly qualified teacher by demonstrating competency in each of the subjects he or she teaches. In addition, the program helps the individual find employment in a high-need local educational agency or public charter school. In lieu of a stipend, DANTES may pay a bonus of \$10,000 to a partici-

pant who agrees to teach in a high-need school.

(Authority: 20 U.S.C. 1221e-3, 3474, and 6671-6677)

§ 230.2 What definitions apply to the Troops-to-Teacher program?

As used in this subpart—

Act means the Elementary and Secondary Education Act of 1965, as amended.

Children from families with incomes below the poverty line means the updated data on the number of children ages 5 through 17 from families with incomes below the poverty line provided by the Department of Commerce that the Secretary uses to allocate funds in a given year to local educational agencies under Title I, Part A of the Act.

High-Need Local Educational Agency as used in section 2304(a) of the Act means a local educational agency—

(1) That serves not fewer than 10,000 children from families with incomes below the poverty line;

(2) For which not less than 20 percent of the children served by the agency are from families with incomes below the poverty line; or

(3) For which 10 percent or more but less than 20 percent of the children served by the agency are from families with incomes below the poverty line and that assigns all teachers funded by the Troops-to-Teachers program to a high-need school as defined in section 2304(d)(3) of the Act for the duration of their service commitment under the Act.

Public Charter School means a charter school as defined in section 5210(1) of the Act.

(Authority: 20 U.S.C. 1221e-3, 3474, and 6672(c)(1))

§ 230.3 What criteria does the Secretary use to select eligible participants in the Troops-to-Teacher program?

(a) The Secretary establishes the following criteria for the selection of eligible participants in the Troops-to-Teachers program in the following order:

(1) First priority is given to eligible service members who are not employed as an elementary or secondary school teacher at the time that they enter